

AMENDED IN SENATE JULY 3, 2001

AMENDED IN SENATE MAY 30, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

Senate Joint Resolution

No. 2

Introduced by Senator Morrow

May 17, 2001

Senate Joint Resolution No. 2—Relative to electricity pricing.

LEGISLATIVE COUNSEL'S DIGEST

SJR 2, as amended, Morrow. Electricity pricing.

This measure would memorialize the members of the Federal Energy Regulatory Commission to, using confidential information, work with the United States Department of Justice and the Federal Trade Commission to provide refined benchmark cost estimates to obtain more precise measures of the appropriate competitive price level of electricity, obtain better measures of potential capacity withholding behavior of generators, determine the role of marketers in the production and bidding behavior of the California generators, *cooperate with the California Public Utilities Commission, the California Attorney General, and other state investigators*, examine the behavior of generators located outside the California Independent System Operator, as specified, and impose, until March 1, 2003, wholesale energy rates that are just and reasonable load-differentiated demand rates or cost-of-service based rates for electricity generated by an electric facility that was in service prior to June 1, 2001, on sales of electric energy at wholesale prices in the western energy market. The measure would further memorialize the Congress of the United States

to hold committee hearings and engage in all other necessary oversight activities to ensure that the Federal Energy Regulatory Commission completes these determinations, activities, and estimates in as timely a manner as possible, to review the confidential industry data, and to require the Federal Energy Regulatory Commission to comply with a specified provision of the Federal Power Act.

Fiscal committee: no.

1 WHEREAS, It is clear that the electrical power crisis in
2 California and the Western ~~Regional Coordinating Council area~~
3 ~~(WRCC)~~ is primarily *Systems Coordinating Council (WSCC)*
4 *region was precipitated by* a supply-side deficiency, created in
5 large part by ~~California's~~ the failure to expand and upgrade its
6 electricity generation and transmission infrastructure in
7 *California* during the past decade; and

8 WHEREAS, While it is logical that the inadequate supply of
9 electricity, especially during peak periods, would drive wholesale
10 market prices higher, regulatory authorities have found that the
11 extraordinarily high actual prices of the past year are too high to
12 be explained by standard market fundamentals in a workably
13 competitive market; and

14 WHEREAS, Analytical studies of wholesale electricity market
15 performance during the past year in California reviewed both the
16 competitive benchmark prices, including all major market
17 fundamentals, and potential capacity withholding; and several of
18 these studies, including one conducted by the California
19 Independent System Operator (ISO), conclude all of the
20 following:

21 (a) The markets were not workably competitive.

22 (b) The high wholesale electricity prices cannot be explained
23 as the natural outcome of “market fundamentals,” such as rising
24 natural gas prices, increased loads in California, reduction of
25 supplies available for import into California due to higher loads
26 elsewhere in the ~~Western States Coordinating Council (WSCC)~~
27 *WSCC*, the cost of environmental compliance, or poor
28 hydroelectric conditions in the Northwest, in competitive markets
29 since there is a very significant gap between actual market prices
30 and competitive benchmark prices that take account of these
31 market fundamentals.

(c) There is empirical evidence, not yet adequately explained, to support a presumption that the high prices experienced were the product of deliberate actions on the part of generators or marketers controlling the dispatch of generating capacity to withhold supply and increase market prices; and

WHEREAS, While analyses of possible capacity withholding behavior have been constrained by the limited availability of data, there is sufficient empirical evidence to warrant further investigation of supply and bidding behavior by generators and marketers operating in the California market; and

WHEREAS, Inasmuch as the Federal Energy Regulatory Commission (FERC) has determined that ~~wholesales~~ *wholesale electric* prices have not been just and reasonable, but has not taken ~~meaningful~~ *sufficient* corrective regulatory action to address high wholesale electric prices, leading to numerous allegations that the FERC has failed to discharge its responsibilities mandated by the Federal Power Act (16 U.S.C. Sec. 791a et seq.) to ensure a ~~competitive wholesale electricity market~~ *that rates subject to its jurisdiction shall be just and reasonable*, and these allegations have tainted the FERC's reputation; and now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That further study is required to support the efforts of state, regional, and federal policymakers to design appropriate remedies to the market failures identified in the studies; and be it further

Resolved, That further study is required to help determine whether the FERC properly discharged its duties; and be it further

Resolved, That full study requires access to confidential data held only by FERC; and be it further

Resolved, That the Legislature respectfully memorializes that FERC to do all of the following:

(a) With the use of confidential data, work with the United States Department of Justice and the Federal Trade Commission to provide refined benchmark cost estimates to obtain more precise measures of the appropriate competitive price level.

(b) With the use of confidential data, obtain better measures of potential capacity withholding behavior of generators, and determine the role of marketers in the production and bidding behavior of the California generators.

1 (c) *Cooperate with the California Public Utilities Commission,*
2 *the California Attorney General, and other state investigators,*
3 *including providing appropriate access to confidential data.*

4 (d) Examine the behavior of generators located outside the
5 California ISO to determine exactly why ~~importers~~ imports
6 declined as much as they did.

7 ~~(d)~~

8 (e) Conduct formal hearings on the issue of illegal pricing and
9 capacity withholding.

10 ~~(e)~~

11 (f) Extend the 60-day refund deadlines pending the findings of
12 these examinations and hearings.

13 ~~(f)~~

14 (g) (1) Commencing 60 days from the date of enactment of
15 this measure, and until March 1, 2003, impose wholesale energy
16 rates that are just and reasonable load-differentiated demand rates
17 or cost-of-service based rates for electricity generated by an
18 electric facility that was in service prior to June 1, 2001, on sales
19 of electric energy at wholesale prices in the western energy market.

20 (2) “Load-differentiated demand rates” or “cost-of-service
21 based rates” means a rate charge or classification for the sale of
22 electric energy that is equal to all of the following:

23 (A) All the variable costs of producing the electric energy.

24 (B) All the fixed costs of producing the electric energy.

25 (C) A reasonable risk premium or return on invested capital.

26 (D) All other reasonable costs associated with the production,
27 acquisition, conservation, and transmission of electric power; and
28 be it further

29 *Resolved*, That the Legislature respectfully memorializes the
30 Congress of the United States to do all of the following:

31 (a) Hold committee hearings and engage in all other necessary
32 oversight activities to ensure that the FERC completes the above
33 described determinations, activities, and estimates in as timely a
34 manner as possible.

35 (b) Hold committee hearings and engage in all other necessary
36 oversight activities, including reviewing the above described
37 confidential industry data to determine whether the FERC has met
38 its mandate under Section 206 of the Federal Power Act, to ensure
39 the existence of a competitive wholesale electric market.

1 (c) Ensure that the FERC has both the necessary accountability
2 to the Congress and resources, including those of the United States
3 Department of Justice and the Federal Trade Commission, to
4 accomplish all of the above.

5 (d) Require the FERC to enforce the fair pricing laws under
6 Section 206 of the Federal Power Act to ensure that rates are just
7 and reasonable; and be it further

8 *Resolved*, That the Secretary of the Senate transmit copies of
9 this resolution to the President and Vice President of the United
10 States, the Speaker of the House of Representatives, to each
11 Senator and Representative from California in the Congress of the
12 United States, and to each member of the Federal Energy
13 Regulatory Commission.

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